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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/518,781

05/31/2005

Pascal DesBois

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3167

27267

7590

08/05/2008

WIGGIN AND DANA LLP  
ATTENTION: PATENT DOCKETING  
ONE CENTURY TOWER, P.O. BOX 1832  
NEW HAVEN, CT 06508-1832

EXAMINER

O HERN, BRENT T

ART UNIT

PAPER NUMBER

1794

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DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/518,781	<b>Applicant(s)</b> DESBOIS ET AL.	
	<b>Examiner</b> Brent T. O'Hern	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 June 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 14-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☒ Claim(s) 4-12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/23/2005</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Group I, claims 1-13 in the reply filed on 13 June 2008 is acknowledged.

The requirement is still deemed proper and is therefore made FINAL.

### ***Claim Objections***

2. Claims 4-12 are objected to under 37 CFR 1.75(c) as being in **improper** form because a **multiple dependent claims 4-12** depend on other multiple dependent claims. See MPEP § 608.01(n). Accordingly, the claims 4-12 have not been further treated on the merits.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear how the fat can comprise salt, vitamins, etc. in claim 11 since the fat is a triglyceride and not a salt, etc..

Clarification and/or correction is required.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

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Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claim 13 is rejected under 35 U.S.C. 101 because the claimed invention is directed to **non-statutory** subject matter. **Use claims** are not proper in the United States.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-13 are rejected under 35 U.S.C. 102(b) as being anticipated by IDRIS et al., *Evaluation of Shortenings Based on Various Palm Oil Products*, 1373 Journal of the Science of Food and Agriculture 46 (1989) No. 4, Barking, Essex, Gr. Britain (See Applicant's IDS filed 5/23/2005).

Idris teaches a vegetable fat/food product, characterized in that at least 90% of the fatty acids that it comprises are fatty acids with 16 to 18 carbon atoms, in that it comprises from 12 to 18% of linoleic acid relative to the total fatty acids, it has a water content of less than 0.4% of the total mass, it comprises from 25 to 30% of saturated fatty acids relative to the total fatty acids, it comprises from 45 to 60% of monounsaturated fatty acids relative to the total fatty acids, it comprises from 10 to 30% of polyunsaturated fatty acids relative to the total fatty acids, it comprises less than 1%/0.3% of trans fatty acids relative to the total fatty acids, it comprises from 3 to 7% of

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linolenic acid relative to the total fatty acids, the ratio of omega-6 fatty acids to omega-3 fatty acids is less than 7, the palm oil and the rapeseed oil are in respective proportions of between 30:70 and 50:50, with salt and flavourings added to the oil (See p. 483 Table 1, formulations 2C and 3C comprising blends of palm and rapeseed oil.

➤ **Group 2**

- 2A { 50% Palm stearin (IV 44)  
50% Soya bean oil  
2B { 50% Palm stearin (IV 44)  
50% Cottonseed oil  
2C { 50% Palm stearin (IV 44)  
50% Low erucic acid rapeseed (LEAR) oil

**Group 3**

- 3A { 60% Palm stearin (IV 44)  
40% Soya bean oil  
3B { 60% Palm stearin (IV 44)  
40% Cottonseed oil  
3C { 60% Palm stearin (IV 44)  
40% Low erucic acid rapeseed (LEAR) oil

See Tables 2-3 where the 16:0 and 18:0 fatty acids are saturated due to zero double bonds, 16:1 and 18:1 are monounsaturated, with 18:1 being oleic acid, 18:2 being linoleic acid and 18:3 being linolenic acid.

TABLE 3  
Slip melting point, fatty acid composition and triglyceride composition of shortenings

Shortening code:	Group 1			Group 2			Group 3		
	1A	1B	1C	2A	2B	2C	3A	3B	3C
Slip melting point (°C):	44.5	45.0	44.0	44.6	45.2	43.9	42.2	46.4	42.3
Fatty acid composition (%)									
12:0	0.4	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1
14:0	0.8	1.0	0.7	0.6	1.0	0.7	0.5	1.0	0.5
16:0	34.9	27.6	31.4	30.2	38.6	27.7	26.6	41.0	23.1
16:1	0.1	0.3	0.1	—	—	—	—	—	—
18:0	9.5	3.9	3.8	4.3	3.8	3.0	4.3	4.0	2.9
18:1	30.7	28.3	44.7	29.4	25.8	43.7	28.2	27.5	46.1
18:2	25.0	27.8	13.3	31.8	30.4	16.8	36.3	26.4	18.4
18:3	2.4	0.2	3.8	3.5	0.2	5.6	4.1	0.3	5.9
20:0	0.6	0.3	0.4	—	—	—	—	—	—
20:1	—	—	0.4	—	—	1.2	—	—	1.4
22:0	—	—	—	—	—	0.1	—	—	0.2
22:1	—	—	—	—	—	—	—	—	—
24:0	—	—	0.3	—	—	1.1	—	—	1.4

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*With 18:2 and 18:3 being polyunsaturated due to their multiple double bonds. It is known that much of the saturated fatty acids come from palm stearin. Palm stearin is the solid fraction generated by the fractionation of palm oil. The liquid fraction is separated and known to be used mostly as liquid cooking oil. Since the palm stearin and rapeseed oil are not hydrogenated they are substantially free if not completely free of trans fats. Trans fats are known to be very rare in nature and not present in unprocessed palm and rapeseed fats/oils. Trans fats are known to be generated in a hydrogenation reaction. Shortening formulations using palm stearin are widely known and preferred over hydrogenated oils such as hydrogenated soybean oil because the fractionation of palm oil does not create trans fats and is required in order to provide clear palm cooking oil. Oils such as soybean, rape and canola can be fractionated, however, such a step is not required since said refined oils are already clear and the amount of 16:0 and 18:0 fatty oils is significantly less than with palm oil, thus, a lower yield. The formulations have melting points of 43.9 °C and 42.3 °C as illustrated in Table 3. Salt and other materials can be formulated as disclosed in Table 2. All of the claimed percentages and proportions are disclosed in the above tables).*

The phrase “in that it contains, optionally fractionated palm oil and rapeseed oil” in claim 9, lines 2-3 is not limiting since the limitations are not required. Furthermore, the palm oil is fractionated and the blend contains rapeseed oil.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brent T. O'Hern whose telephone number is (571)272-0496. The examiner can normally be reached on Monday-Thursday, 9:00-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brent T O'Hern/  
Examiner, Art Unit 1794  
June 30, 2008

/Elizabeth M. Cole/  
Primary Examiner, Art Unit 1794